IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12866 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VALLABHBHAI RAVJIBHAI DHAMELIYA

Versus

STATE ELECTION COMMISSIONER

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Appearance:

M/S.VYAS ASSOCIATES for Petitioner No. 1-2

MR KV SHELAT for Respondent No. 1

..... for Respondent No. 2-4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/07/2001

ORAL JUDGEMENT

Rule. With the consent of the learned counsel for the parties, the matter is taken up for final hearing today.

2. Respondent No.4 herein, Pravinbhai Mulubhai Gadhavi, was a Councillor of the Palitana Municipality. By order dated 14-6-1999 passed by the Collector, Bhavnagar, respondent No.4 was removed from the office of the Councillor and was disqualified as a member of the Palitana Municipality for the term of the then existing

Municipality. The term of the Municipality was to expire on 10-1-2000 and the elections for the next term were scheduled to be held on 2-1-2000. The nominations for the said elections were filed on 13-12-1999. Respondent No.4, Pravinbhai Mulubhai Gadhavi, filed nomination papers for contesting the above elections from Ward No.5 and also from Ward No.8. The nomination papers of respondent No.4 were rejected for both the above wards on the ground that he had incurred disqualification. The elections were ultimately held and respondent No.4 filed Election Petition No. 1 of 2000 for challenging the elections of the members of the Municipality from Ward No.5. Respondent No.4 also filed Election Petition No.2 of 2000 for challenging the elections to the Municipality from Ward No.8. Both the petitions came to be heard by the learned Joint District Judge, Bhavnagar. By a common judgment and order dated 13-11-2000, the learned Judge held that the rejection of the nomination papers of respondent No.4 was illegal both as regards Ward No.5 and as regards Ward No.8. In the result, the learned Judge set aside the elections of members of the Municipality (except reserved seats) from Ward No.5 as well as Ward No.8. Hence, the general category candidates who had succeeded at the said elections from Ward No.5 have filed Special Civil Application No.12866/2000. As far as the members of the general category candidates elected from Ward No.8 are concerned, they filed Special Civil Applications No.12864 and 13085 of 2000.

3. When all the aforesaid three petitions came up for hearing earlier, it was suggested to the learned counsel for respondent No.4, Pravinbhai Mulubhai Gadhavi that respondent No.4 may opt for either of the two wards, Ward No.5 or Ward No.8 from where he may contest, in case the concerned petition is dismissed.

4. In response to the above suggestion, Mr. K.V. Shelat, learned counsel for respondent No.4 Pravinbhai Mulubhai Gadhavi states that respondent No.4 Pravinbhai Mulubhai Gadhavi is interested in contesting the elections from Ward No.8 and not from Ward No.5. Accordingly, the order passed by the learned Joint District Judge, Bhavnagar, setting aside the elections of general category candidates from Ward No.5 is required to be set aside by consent of parties and without prejudice to the rights and contentions of the parties.

5. Accordingly, Special Civil Application No.12866/2000 is allowed and the order dated 13-11-2000 passed by the learned Joint District Judge, Bhavnagar in Election Petition No.1/2000 is hereby set aside with the

consent of the parties and without prejudice to the rights and contentions of the parties in this petition and without prejudice to the rights and contentions of the parties in Special Civil Applications No.12864 and 13085 of 2000. Rule is made absolute to the aforesaid extent only with no order as to costs. In view of the aforesaid order, the ad-interim order granted on 19-12-2000 is confirmed as final relief. The petition accordingly stands disposed of.

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